

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

<p><b>NICOLO ZIVIS,</b></p> <p>Plaintiff,</p> <p>-vs-</p> <p><b>CREDIT BUREAU COLLECTION SERVICES, INC., a.k.a. CBCS,</b></p> <p>Defendant.</p>	<p>Civil Action No. _____</p>
---	-------------------------------

**COMPLAINT & DEMAND FOR JURY TRIAL**

**INTRODUCTION**

1. Plaintiff Zivis brings this action for actual and statutory damages resulting from the Defendant's various violations of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 *et seq.* (hereinafter "FDCPA"), a law that prohibits debt collectors from using abusive, deceptive, and unfair practices in an attempt to collect a debt.

**JURISDICTION & VENUE**

2. This honorable Court possesses jurisdiction over this matter pursuant to 15 U.S.C. §1692k(d) and 28 U.S.C. § 1331.
3. Additionally, venue in this district arises pursuant to 28 U.S.C. §1391(b) since the Defendant transacts business here and the conduct complained of occurred here.

**PARTIES**

4. Plaintiff Nicolo Zivis is a natural person residing in the County of Niagara, State of New York, and is a "consumer" as that term is defined by 15 U.S.C. §1692a(3).
5. Defendant Credit Bureau Collection Services, a.k.a. CBCS, (hereinafter "CBCS") is a foreign business corporation organized and existing under the laws of the State of Ohio and is a "debt collector" as that term is defined by 15 U.S.C. §1692a(6).
6. Any and all acts of the Defendant hereinafter alleged were performed by Defendant's employees, while under the scope of the Defendant's actual or apparent authority.
7. Any and all references to "Defendant" herein shall include the Defendant and/or an employee of the Defendant.

**FACTUAL ALLEGATIONS**

8. That Plaintiff Nicolo Zivis allegedly defaulted on a debt to Erie County Medical Center ("ECMC"). Said alleged debt will hereinafter be referred to as "the subject debt."
9. The subject debt is a "debt" as that term is defined by 15 U.S.C. §1692a(5), as it allegedly arose out of a transaction in which money, services or property, which was the subject of the transaction, was primarily for personal, family and/or household purposes.
10. That upon information and belief, Defendant CBCS was employed by ECMC following Plaintiff's alleged default, in order to collect payment on the subject debt.
11. That Defendant CBCS thereafter began contacting Plaintiff Zivis, both by phone and by mail, in an attempt to collect the alleged subject debt.
12. That Plaintiff Zivis, by and through the help of his relatives, thereafter raised his dispute of the debt and provided documentation unequivocally establishing that the alleged debt had been timely paid. *See Exhibit A.*
13. That despite being provided proof that the debt was paid in a timely fashion to the original creditor, Defendant CBCS proclaimed that their investigation established that the debt was "still due and owing."
14. That in addition, Defendant CBCS engaged in a false, deceptive and/or misleading manner by repeatedly stating its intention to continue reporting the subject debt to Plaintiff's credit report, despite the fact that it was known, or should have been known, that the subject debt had been paid in a timely fashion.
15. That as a result of Defendant's conduct, Plaintiff Zivis became upset, frustrated, angry, nervous and otherwise suffered from emotional distress.

**CAUSE OF ACTION**

16. The aforementioned acts and omissions of the Defendant have violated the Fair Debt Collection Practices Act (15 U.S.C. §1692 et seq.) as follows:
17. Defendant violated 15 U.S.C. §1692d and 15 U.S.C. §1692d(2) by using language the natural consequence of which was to abuse the reader, by:
  - a. Stating that Defendant's so-called investigation established that the subject debt was "still due and owing," and
  - b. Stating that Defendant would continue to report the subject debt, albeit marked as "disputed," despite the fact that clear and convincing was provided.

18. Defendant violated 15 U.S.C. §1692e, 15 U.S.C. §1692e(2)(A), 15 U.S.C. §1692e(5), 15 U.S.C. §1692e(8) and 15 U.S.C. §1692e(10), by:
- a. Misrepresenting the legal status of the subject debt by informing Plaintiff that the subject debt was “still due and owing” despite the fact that it was not,
  - b. Misrepresenting that Defendant CBCS conducted an investigation and concluded that the subject debt was still due and owing, when it was clear that no such investigation had taken place, and
  - c. Reporting, or threatening to continue reporting, albeit “disputed,” the subject debt as being due on Plaintiff’s credit reports, despite possessing clear evidence establishing that the amount was not due at all.
19. Defendant violated 15 U.S.C. §1692f and 15 U.S.C. §1692f(1) by attempting to collect a debt that was not authorized by law or agreement.
20. Because of the Defendant’s various aforementioned violations of the FDCPA, Plaintiff Nicolo Zivis suffered from emotional distress.

**PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff Zivis respectfully requests that this honorable Court enter judgment against the Defendant for:

- (a) Actual damages, pursuant to 15 U.S.C. §1692k(a)(1);
- (b) Statutory damages of \$1,000.00, pursuant to 15 U.S.C. §1692k(a)(2)(A);
- (c) Costs and disbursements of this action, together with reasonable attorney's fees, pursuant to 15 U.S.C. § 1692k(a)(3); *and*
- (d) For any and all additional relief as this honorable Court may deem just and proper.

**JURY DEMAND**

Please take notice that Plaintiff Zivis demands a trial by jury in this action.

Date: February 6, 2012

/s/Frank J. Borgese  
Frank J. Borgese, Esq.  
Graham & Borgese, LLP  
*Attorneys for the Plaintiff*  
482 Delaware Ave.  
Buffalo, New York 14202  
frank@gbdebthelp.com  
716.200.1520

**Exhibit A**

**ACCOUNT ACTIVITY (CONTINUED)**

Date of Transaction	Merchant Name or Transaction Description	\$ Amount
07/09	ERIE COUNTY MEDICAL CE 716-898-4920 NY	117.85
07/09	ERIE COUNTY MEDICAL CE 716-898-4920 NY	73.95
07/11	BERRAFATOS PRIMA PIZZA CLARENCE NY	5.38
07/13	TRANSIT ROAD ASSOC INC 716-636-1375 NY	10.00
07/14	ERIE COUNTY ME00079806 BUFFALO NY	3.23
07/15	CITY OF BFLO PRK METER 7168515722 NY	2.00
07/18	PUMPKINS INC WILLIAMSVILLE NY	220.69
07/19	SAPPHIRE SALON - SHE 716-6362544 NY	95.00
07/20	ERIE COUNTY ME00079806 BUFFALO NY	3.14
07/23	CITY OF BFLO PRK METER 7168515722 NY	2.00
07/21	CITY OF BFLO PRK METER 7168515722 NY	2.00
07/22	ERIE COUNTY ME00079806 BUFFALO NY	3.78

2011 Totals Year-to-Date	
Total fees charged in 2011	\$0.00
Total interest charged in 2011	\$0.00

Year-to-date totals reflect all charges minus any refunds applied to your account.

**INTEREST CHARGES**

Your Annual Percentage Rate (APR) is the annual interest rate on your account.

Balance Type	Annual Percentage Rate (APR)	Balance Subject To Interest Rate	Interest Charges
<b>PURCHASES</b>			
Purchases	9.24% (v)	-0-	-0-
<b>CASH ADVANCES</b>			
Cash advances	19.24% (v)	-0-	-0-
<b>BALANCE TRANSFERS</b>			
Balance transfers	9.24% (v)	-0-	-0-

(v) = Variable Rate

30 Days in Billing Period

Please see Information About Your Account section for the Calculation of Balance Subject to Interest Rate, Annual Renewal Notice, How to Avoid Interest on Purchases, and other important information, as applicable.

**IMPORTANT NEWS**

Like us on Facebook and be the first to know about upcoming events, exclusive cardmember experiences, behind the scenes photos and more at:  
<http://www.facebook.com/chasesapphire>

UI  
 Pre  
 Poi  
 Bon  
 Bon  
 Bon  
 Curr

As a  
 Plus,  
 Rewa  
 at ww

ACC

Date  
 Transa

07/07

07/19

06/25

06/24